

## Federal Communications Commission

## § 0.465

files or to testify concerning them, basing the refusal upon this rule.

(Secs. 4(i), 303(n), Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(n); 47 CFR 0.231(d))

[49 FR 13367, Apr. 4, 1984]

### **§ 0.465 Request for copies of materials which are available, or made available, for public inspection.**

(a) The Commission awards a contract to a commercial duplication firm to make copies of Commission records and offer them for sale to the public. In addition to the charge for copying, the contractor may charge a search fee for extracting the requested documents from the Commission's files.

NOTE: The name, address, telephone number, and schedule of fees for the current duplication contractor are published annually at the time of contract award or renewal in a Public Notice. This information may be obtained from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division, Telephone (202) 632-7000.

(b) The Commission awards a contract to a commercial firm to transcribe Commission proceedings in which a verbatim record is kept and to offer copies of the transcript for sale to the public. Except as authorized by the Commission, the firm is required to retain the capacity to furnish copies of the transcript for a period of 5 years, and may retain that capacity for a longer period, even though another firm is currently transcribing Commission proceedings. Requests for copies of the transcript of the current proceedings should be directed to the current contractor. Requests for transcripts of older proceedings will be forwarded by the Commission to the firm which made the transcript in question; and the names of contracting firms for past years will be furnished upon request.

NOTE: The name, address, telephone number, and schedule of fees for the current transcription contractor are published annually at the time of contract award or renewal in a Public Notice. This information may be obtained from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division, Telephone (202) 632-7000.

(c)(1) Contractual arrangements which have been entered into with commercial firms, as described in this section, do not in any way limit the right of the public to inspect Commission records or to extract therefrom whatever information may be desired. Coin-operated copy machines are available for use by the public in various reference rooms for the purpose of duplicating records available at those locations. In addition, any person may make photocopies of Commission records with his or her own equipment at locations where those records may be inspected. Prior approval for such arrangements, which must be obtained from the Operations Support Division, Office of Managing Director, is subject to the availability of adequate space and facilities to accommodate the user's equipment.

(2) The Commission has reserved the right to make copies of its records for its own use or for the use of other agencies of the U.S. Government. When it serves the regulatory or financial interests of the U.S. Government, the Commission will make and furnish copies of its records free of charge. In other circumstances, however, if it should be necessary for the Commission to make and furnish copies of its records for the use of others, the fee for this service shall be 17 cents per page. For copies prepared with other media, such as computer tapes, microfiche or videotape, the charge will be the actual direct cost including operator time. Requests for copying should be accompanied by a statement specifying the maximum copying fee the person making the request is prepared to pay. If the Commission estimates that copying charges are likely to exceed \$25 or the amount which the requester has indicated that he/she is prepared to pay, then it shall notify the requester of the estimated amount of fees. Such a notice shall offer the requester the opportunity to confer with Commission personnel with the object of revising or clarifying the request.

NOTE: The criterion considered in acting on a waiver request is whether "waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public." 5 U.S.C. 552(a)(4)(A). The following

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factors are relevant in applying that criterion: the number of persons to be benefited, the significance of the benefit, the private interest of the requester which the release may further, the usefulness of the materials to be released to the general public and the likelihood that a tangible public benefit will be realized. (See Attorney General's 1974 FOI Amdts. Memorandum, at 15.)

(3) Requests for copies by representatives of foreign governments or persons residing in foreign countries shall be submitted to the General Counsel and will be reviewed by the General Counsel under criteria established by the Department of Commerce for controlling the export of technical data.

(4) Certified Documents. Copies of documents which are available or made available, for inspection under §§0.451 through 0.465, will be prepared and certified, under seal, by the Secretary, or for documents located in the Commission's Gettysburg, Pennsylvania Office by his deputy. Requests shall be in writing, specifying the exact documents, the number of copies desired, and the date on which they will be required. The request shall allow a reasonable time for the preparation and certification of copies. The fee for preparing copies shall be the same as that charged by the Commission as described in §0.465(c)(2). The fee for certification shall be \$10 for each document.

(d)(1) Copies of computer maintained data bases produced by the Commission may be obtained from the National Technical Information Service (NTIS), Department of Commerce, in the form of machine-readable media, e.g., magnetic tapes, microfiche, or diskettes. These materials are not available to the general public directly from the Commission. Data bases produced on magnetic tape and microfiche by the Commission are listed in two catalogs which may be obtained from NTIS. Extracts from these catalogs pertaining to the Commission are available without charge from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division. The catalogs describe the data base, state the estimated fee for providing it, and specify ordering information. Periodic updates to computer maintained data bases, as they occur,

will not be furnished in machine-readable form.

NOTE: The Commission awards a contract to provide the public with direct electronic access to a portion of the non-Government Master Frequency File data base released for access and residing on the contractor's computer system. The name, address, telephone number, and schedule of fees for the current contractor are published annually at the time of contract award or renewal in a Public notice. This information may be obtained from the Office of Congressional and Public Affairs, Consumer Assistance and Small Business Division, Telephone (202) 632-7000.

(2) Copies of computer generated data stored as paper printouts or on microfiche may also be obtained from the Commission's duplicating contractor (see paragraph (a) of this section).

(3) Copies of computer source programs and associated documentation produced by the Commission shall be obtained through the National Technical Information Service (NTIS), Department of Commerce. NTIS will forward each request to the Commission. If it can be determined that the requested program is available, the Commission will distribute the current edition to the requester. NTIS will act as billing agent for the Commission. NTIS will bill the requester for the direct costs of production plus their overhead based on billing information provided by the Commission. Estimates of the total cost may be obtained from NTIS in advance. NTIS will not stock Commission source programs and documentation, nor will they maintain a catalog of Commission computer programs that may be available due to the large volume of programs and the frequency with which they are revised. Requests shall be limited to computer source programs and associated documentation in existence when the request is submitted; requests which require the Commission to produce unique computer programs, data bases and documentation, which are not part of its inventory at the time of the request, will not be honored. Likewise, periodic updates of these materials, as they occur, will not be furnished.

(4) The Commission reserves the right to distribute copies of its computer source programs and data bases to other entities as it sees fit, and when it serves the regulatory interests

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of the U.S. Government or the Commission, as determined by the Managing Director.

(e) This section has no application to printed publications, which may be purchased from the Superintendent of Documents or private firms (see §§0.411 through 0.420). Nor does it apply to application forms or information bulletins, which are prepared for the use and information of the public and are available upon request (see §§0.421 and 0.423).

(f) Anyone requesting copies of documents pursuant to this section may select either the Commission or the contractor to fulfill the request. If a request goes directly to the contractor, the requester will be charged by the contractor pursuant to the price list set forth in the latest contract. If a request goes directly to the Commission, it shall be sent to the Office of the Managing Director for appropriate processing according to the fee standards established under the FOIA.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 397; 47 CFR 0.231(d))

[32 FR 10573, July 19, 1967, as amended at 41 FR 51610, Nov. 23, 1976; 45 FR 85028, Dec. 24, 1980; 49 FR 13368, Apr. 4, 1984; 51 FR 34982, Oct. 1, 1986; 52 FR 36774, Oct. 1, 1987; 53 FR 39093, Oct. 5, 1988]

### §0.466 Definitions.

(a) For the purpose of §§0.467 and 0.468, the following definitions shall apply:

(1) The term *direct costs* means those expenditures which the Commission actually incurs in searching for and duplicating (and in case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses, such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material contained within documents.

Such activity should be distinguished, however, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (a)(3) of this section).

(3) The term *review* refers to the process of examining documents located in response to a commercial use request (see paragraph (a)(4) of this section) to determine whether any portion of a document located is exempt from disclosure. It also includes processing any documents for disclosure, e.g., performing such functions that are necessary to excise them or otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of FOIA exemptions.

(4) The term *commercial use* request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial interests of the requester. In determining whether a requester properly falls within this category, the Commission shall determine the use to which a requester will put the documents requested. Where the Commission has reasonable cause to question the use to which a requester will put the documents sought, or where that use is not clear from the request itself, the Commission shall seek additional clarification before assigning the request to a specific category.

(5) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution or graduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

(6) The term *non-commercial scientific institution* refers to an institution that is not operated on a commercial basis as that term is referenced in paragraph (a)(4) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(7) The term *representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about